

FCC MAIL SECTION

DEC 14 4 09 PM '92  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-292

In the Matter of

Amendment of Section 73.202(b), RM-8135  
Table of Allotments,  
FM Broadcast Stations.  
(Milton-Freewater, Oregon)

## NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1992; Released: December 14, 1992

Comment Date: February 4, 1993

Reply Comment Date: February 19, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Alexandra Communications ("petitioner"), requesting the substitution of Channel 250C2 for Channel 250C3 at Milton-Freewater, Oregon, and the modification of Station KLKY(FM)'s construction permit to specify the higher class channel.<sup>1</sup> Petitioner failed to state its intention to apply for Channel 250C2, if allotted to Milton-Freewater and should correct this deficiency in response to this *Notice*. See paragraph 2 of the attached Appendix.

2. We believe the public interest would be served by proposing the substitution of Channel 250C2 for Channel 250C3 at Milton-Freewater, since it could provide the community with expanded radio service and enable Station KLKY(FM) to increase its coverage area. Channel 250C2 can be allotted to Milton-Freewater in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.8 kilometers (11 miles) north-east to accommodate petitioner's desired transmitter site.<sup>2</sup> As requested, we also propose to modify Station KLKY(FM)'s construction permit to specify operation on the higher class channel. In accordance with Section 1.420(g) of the Commission's rules, we will not accept competing expressions of interest in use of the channel at Milton-Freewater, Oregon, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Milton-Freewater, Oregon	250C3	250C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 4, 1993, and reply comments on or before February 19, 1993, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Peter W. Lechman  
Lechman & Johnson, Inc.  
16201 Trade Zone Avenue, Suite 108  
Upper Marlboro, Maryland 20772  
(Consultant to the petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission

<sup>1</sup> We note that petitioner's request was signed by its technical consultant and we are unable from the petition to determine if he is also a principal of the petitioner. Although a petitioner may seek assistance in the preparation of a pleading or petition for rule making, Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission be signed and verified by the commenting or

petitioning party and his/her address stated, unless they are represented by legal counsel. Therefore, petitioner is requested to clarify this matter and comply with the requirements of Section 1.52 in submitting its comments. Failure to do so could result in dismissal of the petition.

<sup>2</sup> The coordinates for Channel 250C2 at Milton-Freewater are North Latitude 45-59-04 and West Longitude 118-10-08.

specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to

which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.